



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 15, 2010

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
City of El Paso
810 East Overland Avenue
El Paso, Texas 79901-2516

OR2010-14013

Dear Ms. Sandoval-Walker:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 393411.

The El Paso Police Department (the "department") received a request for information pertaining to a specified incident. You state that you have released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. We understand you to assert the information you have marked is confidential under both common-law and constitutional privacy, which are encompassed by section 552.101 of the Government Code. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy," which include matters related

to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

Upon review, we find that none of the information you have marked falls within the scope of constitutional privacy and it may not be withheld under section 552.101 on this basis. Although we agree that the information you have marked is generally subject to common-law privacy, we note the requestor is the representative of the individual whose privacy interest is at issue. Section 552.023 of the Government Code provides a governmental body may not deny access to a person or a person's representative to whom the information relates on the grounds the information is considered confidential under privacy principles. Gov't Code § 552.023(b). Consequently, the department may not withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

You also seek to withhold portions of the submitted information under sections 552.130 and 552.147 of the Government Code. Section 552.130 provides that information relating to a motor vehicle operator's or driver's license issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1). Section 552.147 provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147(a). We note, however, that sections 552.130 and 552.147 protect personal privacy. In this instance the information you have marked belongs to the requestor's client. As such, the requestor has a right of access to her client's driver's license information and social security number under section 552.023 of the Government Code. *See id.* § 552.023(a) Open Records Decision No. 481 (1987). Therefore, the department may not withhold the information you have marked under sections 552.130 and 552.147. As you raise no further exceptions to disclosure, the department must release the information at issue.¹

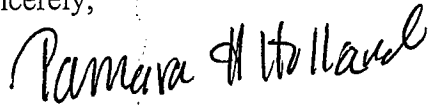
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php.

¹Because the requestor has a right of access to certain information that otherwise would be excepted from release under the Act, the department must again seek a decision from this office if it receives a request for this information from a different requestor.

or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Tamara H. Holland".

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/em

Ref: ID# 393411

Enc. Submitted documents

c: Requestor
(w/o enclosures)